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The Examiner rejected claims 1 to 19 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 to 17 of US Patent No. 7,229,660.

A rejection of non-statutory obviousness-type double patenting may be overcome by the submission of a Terminal Disclaimer, signed by an attorney or agent of record. Such document is enclosed, disclaiming the term of the patent to be granted on this application which may extend beyond the term of US Patent No. 7,229,660.

With the recordal of the Terminal Disclaimer, it is submitted that claims 1 to 19 are no longer open to rejection on non-statutory obviousness-type double patenting as being unpatentable over claims 1 to 17 of US Patent No. 7,229,660 and hence the rejection should be withdrawn.

The Examiner provisionally ejected claims 4, 8 to 14 and 19 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 4, 10 to 16 and 20 of copending Application No. 11/188,747. As noted above, claims 1 to 22 have been deleted from Application No. 11/188,747, thereby rendering moot the provisional obviousness-type double patenting rejection.

The Examiner rejected claims 1, 2, 5 to 13, 15 and 17 under 35 USC 102(b) as being anticipated by Pickford USP 6,261,625. Reconsideration is requested having regard to the following comments.

The Pickford reference is concerned with the provision of microwaveable food products which comprises substrate foodstuff impregnated with a stabilizer composition adapted to increase in viscosity when irradiated in a microwave oven. (see Abstract)

As specified in col. 2 of Pickford, the stabilizer composition comprises a reversibly thermogelling, water binding combination of starches, gums and

optionally proteins. Preferred compositions include cellulose gum, hydrocolloid and protein isolate. It is apparent, therefore, that the reference employs combinations of materials formulated to provide the viscosity increase upon microwaving.

The Examiner refers specifically to Examples 6 and 14. Example 6 describes a composition comprising cellulose gum, modified starch, xanthan gum, egg albumen and pea starch which may be added to a substrate as a dry powder. It is stated that the composition of Example 6 as well as Example 5 can be used "for microwaveable coated scrambled egg products", but no detail is given as to such "scrambled egg products".

Example 14 describes the provision of a Breakfast Brunch Bar. The stabilizer of Example 5, comprising vital wheat gluten, pectin and whole milk powder, was mixed with water in a high shear mixer. Pasteurized scrambled egg is placed in a tumble mixer and the stabilizer mixture added to it. Tumbling was continued and the stabilizer of Example 6 was added together with the polydextrose and cooked bacon. The mixture was tumbled until it stiffened, chilled, and formed into shape for coating. However, the product is not coated.

Since Pickford does not disclose a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating, no claim can be anticipated.

With respect to claims 5 to 7, while the reference generally describes liquid albumen and gelatin as stabilizer components, there is no disclosure of the use of such materials in combination and in combination with scrambled eggs to provide structural integrity to the scrambled egg core of the snack food products.

Accordingly, it is submitted that claims 1, 2, 5 to 7 and 15 to 17 are not anticipated by Pickford and hence the rejection thereof under 35 USC 102(b) as being anticipated by Pickford, should be withdrawn.

The Examiner rejected claims 3, 4, 8 to 14 and 16 under 35 USC 103(a) as being unpatentable over Pickford in view of Rapp et al US 4,469,708.

The Pickford reference and its shortenings as a prior art reference have been discussed above. It is submitted that Rapp et al does not remedy the defects of Pickford.

The Rapp et al reference does not produce scrambled eggs but rather the reference describes a freeze-thaw stable egg product and a process of preparing the product. Essential to the applicants invention is that the shaped core is formed by scrambling eggs. The term "scrambled eggs" refers to eggs cooked by a particular method (scrambling) in which egg yolks and whites are mixed together, optionally along with milk, and cooked while stirring.

By way of contrast, the product disclosed in Rapp et al comprises discrete pieces of egg bound together and covered with a batter coating. As clearly described in col. 2, ll 16 to 21 of Rapp, the freeze-thaw stabilized egg product internally has the "appearance of scrambled eggs". Nowhere in the reference is there described a product which is scrambled eggs.

As indicated by the Examiner, in the procedure described in Rapp et al, an egg mixture and water-binding carbohydrates are cooked sufficiently to coagulate the albumen content of the egg. The carbohydrates are used in sufficient quantity effective to render the eggs freeze-thaw stable when cooked. The cooked egg mixture then is subdivided into discrete pieces, the discrete pieces are coated with a binder in an amount effective to hold the discrete pieces together, and the binder-coated discrete pieces formed into a desired portion. The desired portion then is coated with batter.

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There is nothing in the disclosure of Rapp et al which would cause a person skilled in the art in any way to modify the teaching of Pickford with respect to the features of the subclaims rejected.

Accordingly, it is submitted that claims 3, 4, 8 to 14 and 16 are patentable over the applied prior art, and hence the rejection thereof under 35 USC 103(a) as being unpatentable over Pickford in view of Rapp et al, should be withdrawn.

The Examiner rejected claims 18 and 19 under 35 USC 103(a) as being unpatentable over Pickford in view of Pilgrim et al and Scheideler.

Claims 18 and 19 claim the provision of egg cores from eggs containing added omega-3 fatty acid (claim 18) with the omega-3 fatty acid being present in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs (claim 19).

As the Examiner states, Pilgrim reference teaches a livestock feeding method that results in eggs with significantly increased amounts of essential omega-3 fatty acid. However, both claims 18 and 19 require that the omega-3 fatty acid be added to the egg.

Scheideler apparently is cited for a teaching of taste testing scrambled eggs made from omega-3 fatty acid eggs. Again the study is on eggs which have significantly-enhanced levels of omega-3 fatty acid by selection of feed materials. Again, the scrambled eggs are not made from eggs to which the omega-3 fatty acid is added (claim 18) in the amount recited (claim 19).

Accordingly, it is submitted that claims 18 and 19 are patentable over the applied prior art and hence the rejection thereof under 35 USC 103(c) as being unpatentable over Pickford in view of Pilgrim and Scheideler, should be withdrawn.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

Michael I. Stewart
Reg. No. 24,973

Toronto, Ontario, Canada,
PH. No. (416) 595-1155
FAX No. (416) 595-1163